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MARJORIE MESIDOR

March 15, 2010

Donna Napalitano, Esq.  
Deputy Bureau Chief  
Nassau County Attorney Office  
One West Street  
Mineola, New York 11501-4820

Re: Darryl T. Coggins v County of Nassau, et al.  
Docket No.: 07-CV-3624(JFB)(AKT)

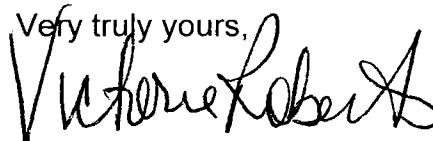
Dear Ms. Napalitano:

Enclosed please find the original and one copy of the testimony of Alexander J. Barnych, taken at an examination before trial on February 25, 2010 in the above-referenced matter.

Please have the witness execute the original and return to us as soon as possible. Please note that any necessary changes are to be made on a separate sheet of paper and notarized, with the reason for the change or correction set forth. The copy is for your files.

Please note that if the original is not signed and returned to us within thirty days of the date hereof, we shall utilize the same at trial as if signed and sworn to.

Very truly yours,



VICTORIA ROBERTS  
Legal Assistant

Enclosures

:vr

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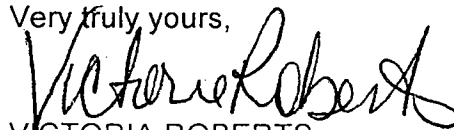
During the depositions of Defendants Alexander J. Barnych and Nicholas Occhino, request for documents were made. To-date, we have no record of receiving the requested documents. Please allow this to serve as a formal written demand for documents. Requests were made as follows:

- **Defendant Alexander J. Barnych deposed February 25, 2010:**
  - Page 79: complete records of Internal Affairs Unit;
  - Page 91: document relating to vouchering of gun and magazine by Nassau County of Floral Park Police Departments;
  - Page 94: any photographs of gun, car or anything else taken at the time of the event; and
  - Page 99: case file.
- **Defendant Nicholas Occino deposed February 25, 2010:**
  - Page 85: entire file of Internal Affairs Unit.

As quite some time has passed since these requests were made, it would be greatly appreciated if this matter were given your immediate attention.

Thank you for your cooperation. We look forward to hearing from you in the near future.

Very truly yours,



VICTORIA ROBERTS  
Legal Assistant

Enclosures  
:vr

COPY

1

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----x  
5 DARRYL T. COGGINS,

6 Plaintiff,

7 - against -

8 COUNTY OF NASSAU, NASSAU COUNTY POLICE  
9 DEPARTMENT, POLICE OFFICER JAMES VARA,  
10 in his individual and official capacity,  
11 and POLICE OFFICER CRAIG BUONORA, in his  
12 individual and official capacity, and  
13 JOHN DOES "1-10," in their individual  
14 and official capacity,

15 Defendants.

16 Docket No. 07-CV-3624

17 -----x  
18 50 Clinton Street  
19 Hempstead, New York

20 February 25, 2010  
21 1:53 p.m.

22  
23 Deposition of the Defendant, NASSAU  
24 COUNTY POLICE DEPARTMENT by ALEXANDER J.  
25 BARNYCH, pursuant to Notice, before Jennifer  
Fuchs, a Notary Public of the State of New  
York.

26  
27  
28 REALTIME REPORTING, INC.  
29 124 East Main Street, Suite 202  
30 Babylon, New York 11702  
31 516-938-4000

A P P E A R A N C E S:

LAW OFFICES OF FREDERICK K. BREWINGTON

Attorney for Plaintiff

50 Clinton Street, Suite 501

Hempstead, New York 11550

BY: IRA FOGELGAREN, ESQ.

DONNA NAPOLITANO, ESQ.

Deputy Bureau Chief

Attorney for Defendants County of Nassau,

Nassau County Police Department and Police

Officer James Vara

Nassau County Attorney

One West Street

Mineola, New York 11501

LAW OFFICES OF LAURENCE JEFFREY WEINGARD, ESQ.

Attorney for Defendant Police Officer Craig

Buonora

250 West 57th Street, Suite 401

New York, New York 10107

BY: LAURENCE JEFFREY WEINGARD, ESQ.

1  
2 IT IS HEREBY STIPULATED AND  
3 AGREED by and between the attorneys for  
4 the respective parties herein, that the  
5 filing, sealing and certification of the  
6 within deposition be waived.

7 IT IS FURTHER STIPULATED AND  
8 AGREED that all objections, except as to  
9 the form of the question, shall be  
10 reserved to the time of the trial.

11 IT IS FURTHER STIPULATED AND  
12 AGREED that the within deposition may be  
13 sworn to and signed before any officer  
14 authorized to administer an oath with  
15 the same force and effect as if signed  
16 and sworn to before the Court.

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1  
2 A L E X A N D E R J. B A R N Y C H,  
3 called as a witness, having been duly  
4 sworn by a Notary Public, was examined  
5 and testified as follows:

6 EXAMINATION BY

7 MR. FOGELGAREN:

8 Q. Please state your full name for  
9 the record.

10 A. Alexander J. Barnych.

11 Q. What is your address?

12 A. 1490 Franklin Avenue, Mineola,  
13 New York 11501.

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. My name is Ira Fogelgaren. I  
17 represent the plaintiff, Darryl Coggins, in  
18 this matter, and I am going to be asking you  
19 about the facts and circumstances surrounding  
20 this lawsuit.

21 If at any time you don't  
22 understand my questions, please let me know,  
23 and I will try to rephrase them as best I can.  
24 Please keep your answers verbal. The reporter  
25 can't take down nods of the head. And please

Barnych

wait for me to finish my question before you start to answer. She can't take down both of us speaking at the same time. If at any time you need a break, just let me know, and I will accommodate you, okay?

A. Very good.

Q. Are you employed?

A. Yes, I am.

Q. Where?

A. I work for David Lerner Associates in Syosset, New York.

Q. In what capacity?

A. I'm an investment counselor.

Q. How long have you been working for them?

A. Since October 1st of 2007.

Q. What did you do before that?

A. I was a police officer and detective.

Q. For who?

A. Nassau County Police Department.

Q. From when to when?

A. May 31, 1985 through September 14, 2007.

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Q. When did you become a detective?

A. June of 1998.

MR. WEINGARD: Can I just get the year? You said May 31st. I didn't catch the year.

THE WITNESS: 1985.

MR. WEINGARD: Thank you.

Q. When you became a detective, where were you first assigned?

A. I was assigned to the 8th Squad in Levittown.

Q. Doing what?

A. General precinct detective assignments.

Q. For how long were you with the 8th Squad?

A. Up until December of 2001.

Q. Where were you assigned to after December of '01?

A. The 3rd Squad detectives in Williston Park.

Q. What duties did you have at the 3rd Squad?

A. General precinct detective



Barnych

assignments.

Q. Prior to coming to this deposition today, did you review any documents to prepare for this deposition?

A. Yes, I did.

Q. What documents did you review?

A. The arrest paperwork, case report.

Q. Anything else?

A. No.

Q. On October 9, 2004, were you working as a police officer?

A. Yes, I was.

Q. Do you have any independent recollection of the incident that occurred in Floral Park at Jericho Turnpike and Holland Avenue at that time?

A. My recollection will be of what happened when I was -- when I arrived there. That would be several hours after the initial point of contact.

Q. On October 9, 2004, were you working a tour?

A. Yes, I was.

Barnych

Q. From when to when?

A. 7:00 in the morning until 5 p.m.  
in the afternoon.

Q. Did you have a particular  
assignment that day?

A. I was assigned to the 3rd Squad.  
My responsibilities were that of what they  
call the squeal man.

Q. Can you tell me what the duties  
of a squeal man was at that time?

A. Yes. From the hours of 1:30 in  
the morning on that date through 11:30 in the  
morning, I was responsible for any cases that  
came into the 3rd Squad that were assigned to  
the detective division that needed follow-up.

Q. When did you first learn of an  
incident on October 9, 2004 that occurred in  
Floral Park at Jericho Turnpike and Holland  
Avenue?

A. About 8:10 in the morning.

Q. What did you learn?

A. I learned that there was a car  
stop at that location, that the police had  
recovered a weapon at that location, and they

Barnych

were requesting detectives to respond to assist in the investigation.

Q. How did you learn that?

A. I was notified by the front desk.

Q. And you said you were notified by the front desk. Do you know who would sit at the front desk at that time?

A. Normally it would be the desk officer and several other police officers that are assigned to a variety of different functions. I don't remember specifically who made the phone call, though.

Q. After you were notified by the desk officer, what did you do?

A. I secured a radio, the keys to a departmental vehicle. I requested Detective Occhino respond with me, and we proceeded to the location where we were requested.

Q. Prior to leaving the 3rd Precinct at that time, did you learn when the incident occurred at Floral Park?

MS. NAPOLITANO: Objection to form.

You can answer.

Barnych

MR. WEINGARD: I join.

A. I believe during the course of the conversation I was told that it happened earlier in the morning. But specifically as what time, I don't remember.

Q. After you secured the radio and the departmental vehicle, what did you do?

A. Myself and Detective Occhino drove to a location on Jericho Turnpike and Holland Avenue in Floral Park.

Q. Did you carry a memo book on that day?

A. No.

Q. Did you fill out any notes or forms when you first learned about this incident?

MS. NAPOLITANO: Objection.

You can answer.

A. No.

Q. Do you recall what time you arrived at the scene?

A. Somewhere around 8:30 in the morning.

Q. What location did you bring your

Barnych

car to at that time?

A. Jericho Turnpike and Holland Avenue.

Q. Did you get out of your vehicle at that time?

A. Yes, I did.

Q. What did you observe when you got out of your vehicle?

A. There was several police units on the scene, both of Nassau County and Floral Park Village. There was a black Mazda parked on the westbound shoulder, which would be the north side of Jericho Turnpike, probably about 50 to 60 feet west of Holland Avenue. At the time the Crime Scene Unit was there, as well as emergency services officers, in addition to precinct and village police officers.

Q. Did you see any other individuals other than police officers at that time?

MS. NAPOLITANO: Objection.

You can answer.

A. None that were remarkable, you know. It was a Saturday morning, so there are people out and about. It's a combination

Barnych

business/residential area.

Q. I am just asking what you recollect.

Do you recollect anybody beside police officers being there?

A. No.

Q. While you were in the vehicle from when you left the precinct up until the time you arrived at the scene, did you have any conversations with Detective Occhino?

A. I'm sure I did, but I don't specifically remember what we talked about.

Q. Prior to arriving at the scene, did you give any instructions to Detective Occhino as to what he was to do at the scene?

A. Nothing specific, no.

Q. When you got out of your vehicle, where did you go?

A. The scene itself encompassed a fairly large area, so I directed myself to go over to where the suspect auto was. That's where the bulk of the police officers were at that point.

Q. Did Detective Occhino also get

Barnych

out of the car?

A. Yes, sir.

Q. Did he accompany you?

A. Yes.

Q. Did you arrive at the suspect  
auto?

A. Yes.

Q. What did you observe there?

A. It was a black Mazda automobile.  
I believe it was model 626. When I arrived  
there, the passenger door was open. In the  
curb to the right of the passenger door was a  
loaded magazine for a semiautomatic pistol.  
Let me see. There were several police  
officers standing about. Emergency services  
officers had been completing their search of a  
storm drain that was in close proximity to the  
car, and there was a Crime Scene Unit that was  
working as well.

Q. The loaded magazine, where was it  
in relation to that black Mazda vehicle?

A. It was in the gutter on the right  
side of the car, what would be consistent with  
just outside the passenger door.

Barnych

Q. Was it a two-door or four-door car, do you know?

A. I don't remember.

Q. Did you inspect that magazine?

A. I observed it. I didn't pick it up and handle it in any way.

Q. What did you observe about it at that time?

A. It was black metal, and through the peepholes in the side of the magazine you could see that there were rounds contained in it, as well as one round at the top.

Q. Could you tell what type of round it was, what caliber it was?

A. Not immediately, no.

Q. While you were at the scene, did you determine what caliber it was?

A. I believe we determined it to be a 380 caliber.

Q. Do you know how that was determined?

A. It's very possible, but I don't remember who did it and why.

Q. After you got out of your



Barnych

vehicle, did you have any conversations with any police officers at the scene?

A. Yes, I did.

Q. Who is the first police officer you had a conversation with?

A. Police Officer Vara.

Q. Did you know Police Officer Vara prior to that time?

A. Yes.

Q. How did you know him?

A. He's employed in the 3rd Precinct or assigned to the 3rd Precinct.

Q. Had you worked on cases with him previously?

A. I can't say specifically on cases, but I was aware that he was assigned to that precinct.

Q. What did you discuss with Police Officer Vara at that time?

A. I asked Officer Vara to tell me what had happened, then I asked him to show me what his path was after he told me that at one point there was a foot pursuit, and he guided me through the path that he took in the foot

Barnych

pursuit.

Q. What did Officer Vara respond when you asked him what happened?

A. In sum and substance, he gave me a detailed synopsis of everything that he did from the point that he first observed this particular car up until the point that he had a foot pursuit and ultimately lost the subject.

Q. Did he mention anything about a gun?

A. During the course of conversation? Sure.

Q. What did he say?

A. That -- specifically when he was in foot pursuit of the subject, the subject went over a chain-link fence in the driveway of a residence. At that point he had heard a metal object hit the ground, although he was not certain what the metal object was. Later on he came to find out that it was, in fact, a gun. And he then informed me that the gun that was located in the driveway was in the same proximity to where he had heard that

Barnych

metal object hit the ground earlier during his foot pursuit.

Q. Did he say anything else to you during that initial conversation?

A. During the initial conversation?

MR. FOGELGAREN: Yes.

A. Like I said before, it was a synopsis of everything that he had done from the car stop.

Q. Did you take any notes of what was being said at the time?

A. I may have.

Q. How would you take the notes?

A. There's a -- just a regular stenographer's pad that you would take with you, and any of those notes are then included in the case jacket.

Q. Did you ask Vara at that point to show you the path that this incident took place?

A. Yes.

Q. Prior to that time, had you spoken to anybody else at the site other than Vara?

Barnych

A. I spoke to Sergeant Gieshen.

MS. NAPOLITANO: Spell it.

THE WITNESS: J-I-E --

MS. NAPOLITANO: G.

THE WITNESS: Yes, G-I-E-S-H-E-N.

Don't hold me to that. That's the best I can do.

Q. Who is Sergeant Gieshen?

A. He's a patrol supervisor assigned to the 3rd Precinct.

Q. Do you know if he had arrived at that scene before you?

A. I know he did, yes.

Q. What did you talk to him about?

A. I asked him what he knew of the incident, because he was there prior to my arrival. He indicated to me that the two witnesses that were in that subject auto were released earlier or prior to my arrival, and that he was the day shift supervisor who responded to the location, that he was not there during the initial contact.

Q. Did he tell you when he arrived at that location?

Barnych

A. If he did, I don't remember, but it would have been after 6:30 in the morning.

Q. Did Officer Vara indicate to you as to why the black Nissan vehicle was stopped?

A. Sorry?

Q. Did Officer Vara indicate to you why the black Nissan vehicle was stopped?

A. I believe it was a Mazda, not a Nissan.

MR. FOGELGAREN: Nissan, I'm sorry.

A. Initially he said he observed it speeding on Jericho Turnpike.

Q. Did he tell you how fast the vehicle was going?

A. I believe he said somewhere between 50 and 55 miles per hour.

Q. Did he say anything else with regard to the operation of the vehicle before it was stopped?

A. No.

Q. Did you have any discussion with him about investigating whether the driver was

Barnych

intoxicated?

A. Yes. He told me that as he approached the vehicle, he detected the odor of an alcoholic beverage on the driver's breath, and he asked the driver to exit the vehicle in order for Police Officer Vara to conduct some standardized field sobriety testing.

Q. Vara was operating the vehicle at that time?

A. Vara was operating a marked police vehicle at that time.

Q. Was he working with anybody at that time?

MS. NAPOLITANO: Objection.

If you know.

A. I don't believe he was in a two-man car. I believe it was a one-man car.

Q. Did Vara tell you about any field sobriety tests he did at the location?

A. Yes, he did.

Q. What did he tell you about that?

A. He said that after he performed his field sobriety test, that it indicated

Barnych

positive for alcohol involvement, and he was going to attempt to place the individual into custody for driving while under the influence. And at that point the subject broke free and fled eastbound along Jericho Turnpike, then north on Holland Avenue and then turned west into the driveway of a house approximately two houses north of Jericho Turnpike, at which point Police Officer Vara was in foot pursuit, and then he heard the -- and observed the defendant or the subject go over a approximately 4-foot chain-link, metal gate. Police Officer Vara did not follow him over the gate.

At a point in time he doubled back around to check on the occupants of the car, because there was multiple occupants in the car, and then he continued further west to, I believe, Hinsdale Avenue in an attempt to try and intercept the subject on the other block.

Q. Did Police Officer Vara have a police radio with him at the time you saw him on October 9, 2004?

Barnych

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2 A. I don't specifically recall  
3 seeing one on his person, but it would be  
4 normal for him to have one assigned to the car  
5 that he can take as a portable radio.

6 Q. Did you ask Officer Vara if he  
7 requested backup at any point in time?

8 A. I don't specifically recall  
9 asking him if he had backup. He did indicate  
10 to me that there were other officers  
11 responding to his location.

12 Q. Did he say which officers were  
13 responding?

14 A. No. He did let me know that  
15 while he was conducting the sobriety test, he  
16 observed a Floral Park Village officer, which  
17 was, I want to say, about a hundred yards west  
18 of his location facing eastbound.

19 Q. Did Officer Vara indicate if the  
20 Floral Park Village police officer did  
21 anything with respect to what was going on at  
22 that time?

23 MS. NAPOLITANO: Objection.

24 You can answer.

25 A. At what time?



Barnych

Q. At the time he encountered this person.

A. The only thing Police Officer Vara told me is that he conducted the field sobriety test by himself. He was not in the company of any assisting officers directly at that point.

Q. Was there any type of procedure in place at that time for an officer to request backup when he was about to do a field sobriety test?

MS. NAPOLITANO: Objection.

You can answer.

MR. WEINGARD: I'll join in the objection.

A. I'm not certain that there was any specific departmental guideline or regulation that says you must have an assisting officer there to perform those tests, so I don't know whether or not he believed there to be so or not.

Q. Was there a practice at the Nassau County Police Department followed at that time with regard to requesting additional

Barnych

officers when a field sobriety test would be done?

MS. NAPOLITANO: Objection.

You can answer.

MR. WEINGARD: Again, I join.

A. I believe that would be left up to the discretion of the individual officer.

Q. The residence where the suspect had turned into, how far was that from the car?

MS. NAPOLITANO: Objection.

If you understand.

Q. The black Mazda.

MS. NAPOLITANO: Objection.

A. The black Mazda was parked, when I got there, anywhere from 50 to 60 feet west of the northwest intersection of Jericho Turnpike and Holland Avenue. The driveway of the house that was turned into, without a measure, I would say was probably about anywhere from 50 to 60 feet north of the northwest corner of Jericho Turnpike and Holland Avenue on the west side of Holland Avenue.

Barnych

Q. Were there any members of the Crime Scene Unit present at the location when you first got there?

A. Yes, there was.

Q. Who was there?

A. Detective Michael Fannon.

Q. Did you see what he was doing when you first got there?

A. I believe he was finishing up his general scene photographs.

Q. Did there come a point in time where you observed the gun at that location?

A. Yes.

Q. Where was that located?

A. I believe it was in the driveway. My memory doesn't recall what the exact house number was, but it was the driveway that Police Officer Vara indicated that he had followed the subject down. It was -- the gate was probably about 20 feet west of the driveway apron, maybe 25 feet west of the driveway apron, and the gun was on the west side of that gate, so more within the contained property.

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Q. Where was the gun in relation to the gate?

A. It was west of the gate.

Q. How far west, in feet?

A. I would say about 6 or 7 feet west of it, if I can remember.

Q. What was it lying on?

A. Concrete, driveway.

Q. Do you recall how long the driveway was?

A. Maybe in total to the point of the garage, maybe about 65, 70 feet.

Q. How wide was it?

A. One car width.

Q. Were there any cars parked in the driveway?

A. I believe there was a minivan in the driveway.

Q. What did you observe about the gun when you first saw it?

A. It was lying on the driveway.

Q. Do you recall what color it was?

A. Dark metal.

Q. Could you tell what type of a gun

Barnych

it was?

A. Semiautomatic pistol.

Q. Do you know what caliber?

A. Not readily available.

Q. Did you have a discussion about the gun with anybody at the site?

A. Detective Fannon.

Q. Can you tell me what you discussed with Detective Fannon?

A. Well, closer observation, he recorded the dimensions of the gun relative to a ruler. I was present when he took his photographs of the gun. I believe he made it safe by placing a nylon loop through it, and then he secured it into a evidence box to be brought to the police department crime lab for ballistics testing and trace evidence.

Q. Were you informed as to who found that gun at the scene?

MR. WEINGARD: Objection as to form.

MS. NAPOLITANO: Objection.

You can answer.

A. No.

Barnych

Q. Did you ask anybody who found the gun?

A. No.

Q. Did you have an assumption as to who found the gun?

MS. NAPOLITANO: Objection as to form.

You can answer.

MR. WEINGARD: I join.

A. I just know a gun -- they told me a gun was recovered. I don't remember specifically who told me who found what.

Q. Did you have an assumption as to whether a Nassau County police officer or a Floral Park police officer found the gun?

MS. NAPOLITANO: Objection to form.

MR. WEINGARD: Join in it.

A. Could you reask that, please?

Q. At the time you were at the site, did you have an assumption as to whether a Nassau County police officer or a Floral Park police officer found the gun?

A. I didn't make an assumption at

Barnych

that point.

MS. NAPOLITANO: Objection as to

form.

You have to wait for me to

object.

Q. Did Officer Vara tell you while he was at that scene that he had found the gun?

A. No.

Q. Do you know if any other evidence was found at that site?

A. Which site?

Q. At the area in the vicinity of the driveway.

A. Which driveway, which house? If you could be specific, it would help me.

Q. The house where the gun was found.

A. No, there was no specific evidence, other than the gun, found at that house.

Q. Was a ring found in that area?

A. It was found in the rear yard of the home behind the home on Holland Avenue.

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Q. Do you know who found that ring?

A. I don't recall who specifically saw it for the first time, but I do remember seeing it myself.

Q. Where did you see it?

A. It was in a vegetable garden.

Q. What do you recall about the appearance of that ring?

A. It was a rather large yellow metal ring with multiple clear white to white stones on it.

Q. Did you observe anything else in that area, in that general area?

MS. NAPOLITANO: Objection.

A. Vegetables, dirt.

Q. Anything else with regard to evidence of what happened in this incident?

A. For my benefit, let's at least stipulate that in my mind there are three separate and distinct scenes here, where the vehicle was found on Jericho Turnpike, where the gun is found on Holland Avenue and where the ring is found in the backyard of a house from Hinsdale. If you could be kind --



Barnych

MR. WEINGARD: What was that street reference?

THE WITNESS: Hinsdale, H-I-N-S-D-A-L-E.

A. If you could be a little more specific as to which location you are talking about, that would help me.

Q. Let's start with the area where the ring was found, was there anything else found in relation to this incident?

A. I don't recall anything else being found.

Q. Where the gun was found, was there anything else found?

A. No, as I stated before.

Q. And going back to the vehicle.

A. The vehicle was where we found the loaded magazine for a gun that was not the one that was found in the driveway.

Q. Was anything else looked at in that vehicle in that black Mazda?

A. Yes.

Q. What was looked at?

A. The interior of the vehicle was

Barnych

observed. The trunk of the vehicle was observed. There was a photograph that was recovered from the dashboard of the vehicle that depicted a male black who exactly matched the picture of Darryl Coggins, and we believe it was Darryl Coggins, because that was the photo license that Police Officer Vara had secured during the car stop. So yeah, that was recovered as well.

Q. And you said that that ring matched the ring in the photograph?

A. I never said that. Actually, let me strike never. I haven't said that yet.

Q. Did you compare the ring that was found at Hinsdale to the ring that was in the photograph?

MS. NAPOLITANO: Objection.

A. We observed that the person in the photograph was wearing a ring that exactly matched the one that was recovered in the rear yard in the vegetable garden.

Q. Had you seen Darryl Coggins' driver's license at --

A. Yes, at that point I had.

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MS. NAPOLITANO: You have to let him finish.

Q. Who showed you Darryl Coggins' driver's license?

A. Officer Vara.

Q. Did Officer Vara tell you how he got Darryl Coggins' driver's license?

A. I don't specifically recall.

Q. Did Officer Vara tell you he was the sole officer who was pursuing Mr. Coggins initially?

MS. NAPOLITANO: Objection as to form.

You can answer.

A. I believe he said that he initiated the foot pursuit and that he was alone up to the point that he lost contact with Mr. Coggins at the gate in the driveway, but at that point he was aware that there was an assisting officer coming up behind him from Jericho Turnpike.

Q. Did he indicate who that was?

A. It was Officer Buonora.

Q. Did he tell you this while you

Barnych

were at that location?

A. Which location?

Q. The location that you responded to.

A. Jericho Turnpike and Hinsdale or Holland Avenue?

Q. Let me ask you this way.

A. I want to be specific.

Q. Let me ask you this way. Where were you when Officer Vara told you about Officer Buonora approaching in his car?

MS. NAPOLITANO: Objection, not what the witness said.

Q. What exactly did Officer Vara say with regard to another officer approaching at that time?

A. At the point that he was running up the driveway toward the gate, he was aware of the fact that there was an assisting officer behind him but a ways back, probably at the corner of Jericho and Holland.

MR. WEINGARD: I am going to object, unless that's actually what Vara said. Did Vara actually say that, or

Barnych

are you just assuming that it was back there?

THE WITNESS: No. It's in sum and substance.

MS. NAPOLITANO: I am going to object. Again, Mr. Weingard, you will have an opportunity to ask him questions.

MR. WEINGARD: Will you let him answer?

MS. NAPOLITANO: He did answer.

MR. WEINGARD: In sum and substance.

Can we have the answer read back, please.

(Record read.)

Q. At the time you mentioned the assisting officer, was the officer inside or outside of a car?

A. He mentioned that he was aware of the fact that an officer had exited his car and was now coming up behind him to assist him.

Q. Did he indicate how far behind

Barnych

him the other officer was?

A. I don't have a specific recollection of that.

Q. And that officer was Officer Buonora?

A. Yes, sir.

Q. And he told you this on October 9, 2004 at that location?

MS. NAPOLITANO: Objection to form.

You can answer.

A. "He" meaning?

Q. "He" meaning Officer Vara.

A. Yes.

Q. Do you know if that conversation occurred by the vehicle, in the driveway or at some other location?

A. The conversation between Vara and myself?

Q. With regard to the other assisting officer, yes.

A. It was the driveway on Holland Avenue.

Q. Was Officer Buonora present in

Barnych

that location at that time?

MR. WEINGARD: Objection as to form. How would he know if he was present? Except perhaps he might have been told.

MR. FOGELGAREN: Okay. I will rephrase it.

Q. Did you see Officer Buonora at that location at that time?

A. No, I did not.

Q. On October 9, 2004, did you see Police Officer Buonora at any time that day?

A. No.

Q. Did Officer Vara mention anybody else who assisted him at that location other than the officer who was running up the driveway toward the gate?

A. He didn't mention any specific other officers, but it was apparent that there were other police officers there.

Q. Did you have any conversations with Detective Occhino while you were at the site on October 9, 2004?

MS. NAPOLITANO: Objection to

Barnych

form.

You can answer.

A. I'm sure I did.

Q. Do you recall any?

A. Not specifically. It was just back and forth, you know. We would have been commenting on what each of us observed, what he may have found out from the people he spoke to versus who I spoke to, develop a strategy for finding the subjects or witnesses.

Q. Do you know how much time you spent at that location?

A. All total, I want to say probably about two hours.

Q. Do you recall any other conversations you had with any other police officers at that location other than what you've told us up to now?

A. Other than Detective Fannon, no. I believe I spoke to one of the emergency services officers who told me that they had checked some rooftops and mailboxes, and they were negative for recovery of any additional weapons, and also the storm drain on the



Barnych

corner that they had finished searching.

Q. Did they find anything at that storm drain?

A. No.

Q. Did you speak to any civilians at that location?

A. No.

Q. Did you speak to anybody else in the Nassau County Police Department through police radio while you were at that location?

A. I don't remember having any radio contact, no.

Q. Do you know if any member of the police department radioed any information about Darryl Coggins to other members of the police department from that location?

MS. NAPOLITANO: Objection.

MR. WEINGARD: Objection.

A. I have no knowledge of that.

Q. Did you give any instructions to any police officers at that location prior to leaving?

A. Yes.

Q. What were those directions?

Barnych

1  
2 A. I directed that the vehicle in  
3 question be impounded, and I informed Police  
4 Officer Vara that it was his responsibility to  
5 call in a completed case report at the  
6 conclusion of his involvement.

7 Q. What is a completed case report?

8 A. Well, every police incident that  
9 would fit the criteria for it being issued a  
10 case report, the police officer that makes the  
11 initial contact with data processing, if you  
12 will, calls in what they call a preliminary  
13 case report in order to get a sequence number  
14 that allows assisting units, support units,  
15 like crime scene, canine, emergency services,  
16 that's how they track their involvement.

17 So what will happen is the  
18 officer calls data processing. He secures a  
19 preliminary case report, and there's minor  
20 information that has to go in there or very,  
21 very limited amount. At the point that their  
22 involvement is done, they're obligated to call  
23 data processing, fill in the details that  
24 would normally be contained in that report  
25 with regard to known subjects, vehicles,

Barnych

police action, any brief narrative of what had transpired.

Q. Do you know if any evidence was inventoried at the site?

A. Yes.

Q. What evidence was inventoried?

A. The loaded magazine that was recovered from the car or the proximity of the car, the gun that was found in the driveway, the yellow metal ring that was found in the vegetable garden, along with a men's wallet and some other personal papers contained therein, a few other items. They would have been itemized on a evidence invoice. It's a Form 106.

MR. FOGELGAREN: Mark this as

Barnych 1.

(Barnych Exhibit 1, Property Bureau Invoice, marked for identification.)

Q. I am going to show you what has been marked as Exhibit Barnych 1 today's date, and I am going to ask if you can identify that form?

Barnych

A. This is a photocopy of police department form PDCN 106. It bears the case report number, the detective division number, voucher number for property that's identified in the body of it. It bears my signature, along with an itemized list of items that were recovered and where they were recovered.

Q. On this particular list, does that include the gun that is recovered --

A. No.

Q. -- at the site?

MS. NAPOLITANO: Let him finish.

A. No, it does not.

Q. Was there a separate form made out for the gun that is recovered?

A. Yes, sir.

Q. Would it be the same type of form?

A. It should be.

Q. On October 9, 2004, did you see any forms that were filled out by the Floral Park Police Department?

A. No, I didn't.

Q. Subsequent to October 9, 2004,

Barnych

1  
2 did you ever see any forms that were filled  
3 out by the Floral Park Police Department with  
4 regard to what occurred on October 9, 2004 at  
5 the location?

6 A. No, sir.

7 Q. I will show you what has been  
8 previously marked as Occhino 1 (handing). I  
9 am going to ask you if you can identify, start  
10 with the top page.

11 A. This is a Nassau County Police  
12 Department arrest report dated 10/9 of 2004.  
13 The defendant identified as Darryl Coggins,  
14 and that's page 1. And there's information on  
15 here on how the original complaint was  
16 received, who the booking officers were,  
17 description of the subject with regards to  
18 tattoos, any prior arrests he may have had.  
19 That's on page 1.

20 Q. Was there an arresting officer  
21 designated?

22 A. Yes.

23 Q. Who was that?

24 A. That would be me.

25 Q. How were you designated the

Barnych

arresting officer?

A. In the lower portion of the sheet, it's in the arrest data section, it says "booked by." There is a number 6356 with the first five letters of my last name, a comma and then the numbers 7224 followed by the first five letters of Detective Occhino's name.

MR. FOGELGAREN: Take a five-minute break.

MS. NAPOLITANO: Sure.

(Recess taken at 2:45 p.m.)

(Examination resumed at 2:51.)

(Barnych Exhibit 2, Floral Park Police Department document, marked for identification.)

Q. I will show you what has been marked as Barnych 2. I ask you to take a look at it. It's a one-page document. It says Floral Park Police Department on top.

A. You've done a good job of identifying it. I've never seen this before, so I don't know what it is.

Q. You've never seen this document

Barnych

before today?

A. No.

MR. WEINGARD: But it is marked

as 2?

MR. FOGELGAREN: Barnych 2.

Q. After you left the area in Floral Park on October 9, 2004, where did you go after that?

A. Myself and Detective Occhino went to, I believe it was, Woods Avenue in Roosevelt.

Q. What was your purpose of going there at that time?

A. We were looking to see if we could locate Mr. Coggins.

Q. Why did you go to that location?

A. Because that was his known address, as depicted on his driver's license.

Q. Did you meet anybody at that location?

A. There was nobody there.

Q. Did you speak to anybody else in that area?

A. I don't remember.

Barnych

Q. Where did you go after that?

A. We then went to a location in Garden City Park.

Q. What was your purpose in going there?

A. That was the address that we believed was where we would find Ms. Jovan Bates, who was the female passenger in the earlier-discussed black Mazda.

MR. WEINGARD: Can you spell that for us, please.

THE WITNESS: B-A-T-E-S, first name J-O-V-A-N.

Q. What was your reason for seeing her at that time?

A. To interview her to find out if she can give us any insight as to where we might be able to find Mr. Coggins and to also find out what, if anything, she could provide, as far as details from what had happened earlier in the morning.

Q. Did you speak to her at that location?

A. Yes, I did.



Barnych

Q. Was anybody with you at that time?

A. Detective Occhino.

Q. Can you tell me about the conversation you had with her at that time?

A. She did not give us any indication as to where we could find Mr. Coggins. She was reluctant to give us any information initially. We did leave her with the caveat that if she did hear from him, we would appreciate it if she called us, and if she could convince him to call us as well.

Q. Did you ask her about what she observed at the time that Mr. Coggins and Officer Vara were together?

A. No.

Q. Was there any reason that you didn't ask about what she observed at that time?

A. I was more focused on trying to find Mr. Coggins at that point, and I really didn't believe that she could have added any details that altered what I already known had happened earlier.

Barnych

Q. Did you speak to anybody else who was a passenger in that vehicle other than Ms. Bates?

A. I believe we tried to find Mr. Simmons, but I'm not certain whether or not we actually located him or not.

Q. After you spoke to Ms. Bates, what did you do?

A. We then went to where Mr. Simmons was known or believed to have lived.

MR. WEINGARD: Can we get a first name, please?

THE WITNESS: Aaron I believe his first name was.

Q. Did you meet Mr. Simmons at that location?

A. No.

Q. Did you speak to anybody at that location?

A. I don't believe we found anybody there, no.

Q. Where did you go after that?

A. I believe Detective Occhino and I grabbed either a cup of coffee or a bite to

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eat, and then ultimately we ended up back at the 3rd Precinct.

Q. What did you do when you got back to the 3rd Precinct?

A. Went back up to the 3rd Squad, checked the computer system to see what other cases I may have been assigned, and then I worked at my computer to open up this particular case and add my detective's narrative entries into it.

Q. What detective narrative entries did you enter? And you can refer to Occhino 1 to point them out, please.

A. Well, this particular packet of information is comprised of an arrest report, a crime report from this case. There's a document in here that's not at all applicable to anything that we're discussing here. It's part of a case report from approximately four years later. There's an additional copy of the crime report, and there's actually two copies of the crime report attached to this, but there is no case report here.

Q. What information is contained on

Barnych

the case report?

A. Case report is the -- again, the initial -- the date and time, place of occurrence, the participants who were involved, a narrative written by the police officer called preliminary narrative, description of vehicles and what the disposition of those vehicles would be, whether they were released, left legally parked, impounded, et cetera. That is the -- that is the initial police reporting system. That document then gets electronically assigned to the 3rd Squad, in this particular case it would. And then at that point I would add my narrative, which is informally known as a 262, but on that case report it's listed as a detective's narrative, and then it would detail my involvement in the case itself.

Q. On page 3 of Occhino 1 there is a narrative. It goes on to page 4.

A. Correct.

Q. You see that?

A. Yes, I do.

Q. Do you know who prepared that

Barnych

narrative?

A. Well, the first large paragraph in here, if my recollection is correct, is a transcription of what Police Officer Vara would have put in the initial police narrative in his case report, and the second paragraph, which begins "On Saturday, 10/9/2004," that would have been a narrative that was entered by myself. But this is on the arrest report, which is part of the arrest package, not necessarily the case report.

Q. Would Officer Vara add anything on to the case report?

A. Yes.

Q. What would he have entered?

A. Initially -- the date and time of occurrence, location of the occurrence, probably the license, registration of the vehicle that was stopped, a description of the vehicle by year, make and model and color. There should be a listing of any person or persons that were involved in the case, either as police officers or civilians, with their respective name, date of birth, Social

Barnych

Security number, address. And as I stated before, his narrative of what had transpired from point of initial contact to point of calling in the case report.

Q. In the narrative on the arrest report in Occhino 1, the paragraph that you said Officer Vara prepared, how did he do that; did he orally call it into somebody, did he write it down, type it up?

MS. NAPOLITANO: Objection.

If you know.

MR. WEINGARD: I join.

MR. FOGELGAREN: If you know.

A. In the normal course of police operations, the police officer is required to call the data processing bureau and update them as to the complete details of the case as they know them in order for the case to be properly assigned up to the squad or kept at the uniform level. To do that he would have had to call the data processing bureau and dictate this information to a multikeyboard operator, who would then type it into the computer narrative.

Barnych

Q. After Officer Vara submitted the information that led to this paragraph, did you review this paragraph?

A. Yes.

Q. Do you know when you reviewed it?

A. When I initially opened up the case report on the computer.

Q. After reviewing it, did you speak to Officer Vara?

A. No. You mean that day?

MR. FOGELGAREN: That day, yes.

A. No.

Q. Did you have any contact with Mr. Coggins on October 9, 2004?

A. Yes, I did.

Q. When did you first have contact with Mr. Coggins?

A. Somewhere just before 4 p.m. I was contacted by the front desk, and they indicated to me that Mr. Coggins was present in the lobby of the 3rd Precinct, along with an attorney. And I responded downstairs, introduced myself to Mr. Coggins and his attorney.

Barnych

Q. Who was his attorney?

A. I don't remember. It was an older, white gentleman at the time. I believe I kept his card in the case jacket, but I don't remember his name.

Q. Did you have any conversations with Mr. Coggins at that time?

A. My conversation was primarily with the attorney, but I don't remember having a specific conversation with Darryl Coggins.

Q. Do you recall what the conversation with the attorney was at that time?

A. The attorney had indicated to me that he believed that we were looking for Mr. Coggins relating to a DWI incident that had happened earlier in the morning. I commented to the attorney that it would be unlikely that we were looking for him for a DWI this many hours later, and I informed him that the true nature of the charges would be related to possession of a weapon, specifically a loaded firearm and defaced firearm.



Barnych

At that point the attorney commented to me that he was unaware of that situation, and he requested that I not take any statements from Mr. Coggins, as I told him that it was our intention to arrest Mr. Coggins and process him on those charges.

Q. After that conversation ended, what did you do?

A. I brought Mr. Coggins upstairs to the 3rd Squad, placed him in the arrest room, got myself organized and then proceeded to process the arrest.

Q. What did you do with regard to processing the arrest; what did you do exactly?

A. Specifically I opened up a computer program, which was the Swift Justice Arrest processing program. I filled in the data on a screen-by-screen basis that was applicable, prepared the crime report, the arrest report, the two district court informations. I also prepared the police department Form 79, which is the physical condition questionnaire of the defendant.

Barnych

What I had observed about Mr. Coggins, that he had some scrapes on his forearm, I had to make note that these scrapes were present. I asked him how he received those scrapes, and he indicated to me during the foot pursuit by the police, he cut himself when he went over the fence. I placed that comment in the Form 79 for the desk officer to review.

Q. Do you know if anybody inspected Mr. Coggins for any tattoos?

A. I did.

Q. Did you note any tattoos?

A. Yes. On the arrest report the description of his tattoos is in there. It would be on page 1 of Occhino 1. In the first body of information it says, "SMT/clothing," SMT being an abbreviation for scars, marks or tattoos, and it indicated the word Tamel, T-A-M-E-L, on his right forearm, and it says "Thou shall love thy father" on his back. Said he was wearing a white T-shirt, blue jeans and black sneakers.

Q. Going to page 7 of Occhino 1.

A. By 7 do you mean the stamped page

Barnych

at the bottom?

MR. FOGELGAREN: Yes, 000007 of

Occhino 1.

Q. Do you see that page?

A. Yes, I do.

Q. What is that; what form is that?

A. This is the crime report, also known as PDCN Form 85 ASJ, which stands for Swift Justice, and then it bears the case report number, and I believe this would be the first page of a crime report.

Q. There is a portion marked "testimonials."

A. Correct.

Q. Who filled in that section?

A. I did.

Q. What information was supposed to be placed in that section?

A. Testimonials are the elements that a particular witness, be it civilian or police, would be able to articulate or testify to.

Q. The portion James Vara, where it says "no statement," it says, "Recovered

Barnych

loaded handgun." Do you see that, on the second line?

A. Among other things, okay, yes.

Q. Did you put that information into that section?

A. I typed it in, yes.

Q. Did you learn that Officer Vara had recovered the loaded handgun at the site?

A. It was my belief that he was instrumental in the recovery of the gun in one level or another. The semantics of who specifically recovers something, in my opinion, is open for debate, and we can have a discussion on that. But with specific regards to this particular entry, yes, I made it, because I believe that since this entire case was initiated by him and he was ultimately responsible for the car stop and the ensuing foot pursuit, that there was a level of involvement in the recovery, maybe not a textbook definition of such.

Q. Then there is an arrest narrative in the bottom of the page that goes on to the next page.

Barnych

A. 7 on to 8?

MR. FOGELGAREN: Yes.

A. Yep.

Q. Again, that first paragraph, was that prepared by Officer Vara?

A. The bulk of it was, yes.

Q. Was there any part of that first paragraph that was not prepared by Officer Vara?

A. The second paragraph where again it begins "On Saturday, 10/9/2004."

Q. What I was asking was about the paragraph prior to that, the first paragraph.

A. This is a transfer of the information that Police Officer Vara had placed in the case report and transferred over to the arrest report in order to give the court a synopsis of what specific incident happened and what the elements of that are that would rise to the level of criminal activity.

Q. Other than what's contained in Occhino 1, did you do any other investigation with regard to the incident on October 9, 2004

Barnych

involving Darryl Coggins in Floral Park?

A. Other than what's already been talked about?

MR. FOGELGAREN: Yes.

A. No.

Q. Did you have any discussions with any assistant district attorneys about the case?

A. Yes.

Q. When was the first time you discussed the case with an assistant district attorney?

A. I'm sorry. When?

Q. When.

A. I believe it was March of 2005.

Q. Was this after Mr. Coggins' case was going to be presented to a grand jury?

MS. NAPOLITANO: Objection to form.

A. No. It was just prior to that.

Q. Which assistant district attorney did you talk to?

A. I believe her name was Mindy Plotkin.

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Q. Where did you talk to her?

A. At the district attorney's office.

Q. What was the purpose of talking to her at that time?

A. I was subpoenaed as the carrying detective. It was her intention to present the evidence to the grand jury, and as such, you know, my role in the case.

Q. What discussions did you have with her about your role in the case?

A. Specifically that I was the carrying detective, and in sum and substance the details that were already reported in the case and the fact that the defendant had voluntarily surrendered to me at the 3rd Precinct, and I processed him from that point.

Q. What happened after that?

A. With respect to?

Q. Did you have any conversations again with the district attorney, the assistant district attorney, after that?

MS. NAPOLITANO: Objection.

You can answer.

Barnych

1  
2 A. On that particular date or at any  
3 time thereafter?

4 Q. Any time after that, any time  
5 after that.

6 A. Yeah. There was subsequent --  
7 there was a subsequent suppression hearing  
8 that I had to respond to or I was subpoenaed  
9 to.

10 Q. Did you appear before the grand  
11 jury?

12 A. No, sir.

13 MR. WEINGARD: Do we have a date  
14 for that suppression hearing or the date  
15 of appearance?

16 THE WITNESS: I believe the grand  
17 jury was St. Patrick's Day, so it was  
18 what, 3/17 of 2005? I'm sure their  
19 records will back that up. I want to  
20 believe that the suppression hearing  
21 that I was called to was somewhere  
22 either, I want to say, September or  
23 October of 2005, maybe six, seven months  
24 later. I can't recall specifically, but  
25 I'm sure there is a way to determine



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that.

Q. Do you recall which district attorney, assistant district attorney, that you met with at that time?

A. It was Mindy Plotkin.

Q. Do you recall the conversation you had with her at that time?

A. Other than the fact that she informed me that she was not going to put me in to testify --

MR. WEINGARD: I am going to object.

MR. FOGELGAREN: It's okay. You can answer.

A. As I said, she was not going to put me in to testify, but it was necessary to be there, because I was the carrying detective, and then we had a conversation after the hearing. That was a conversation that was initiated by me.

Q. What was that conversation about?

A. There was a Floral Park police officer that had also been requested to appear that day, I believe his name was Police

Barnych

Officer Wilson, who had informed me that he, in fact, recovered, by his definition of recovery, the weapon in the driveway on Holland Avenue and that he had broadcast radio notifications of that fact over his police radio, and he wanted to clear up any misinformation regarding who had, in fact, recovered the gun.

At that point I brought him into Ms. Plotkin's office. I informed her that Police Officer Wilson wanted to give her details on his involvement regarding recovery of the gun, and at that point I left it in her hands, and I went back to my squad.

MR. WEINGARD: I'm sorry. You went back to?

THE WITNESS: I went back to the 3rd Squad.

Q. What was the significance of Officer Wilson's statement to you at that time?

MS. NAPOLITANO: Objection.

MR. WEINGARD: I join.

A. That was the first time that I

Barnych

became aware that somebody other than a Nassau County police member had, in fact, recovered the gun, in whatever definition you want to give the word recovery. He seemed -- he seemed pretty adamant over the fact that that was important to him, and I felt it was equally important to bring that to the attention of Ms. Plotkin.

Q. Did you have any discussions with Officer Vara after you had this conversation with Officer Wilson?

A. I wouldn't say direct conversations with him about -- you mean in the assistant district attorney's office or at any time thereafter?

MR. FOGELGAREN: Anywhere.

A. Well, we had discussed -- not at length, but many weeks or a few weeks later, when I was then summoned to the ADA's office of Jim Clark, Officer Vara had contacted me at the squad and wanted to know what it was all about. So I had told him that apparently there's a problem with the case, and they want to get our input on what happened.

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Q. Did you say anything else to Detective Vara at that time?

A. Police Officer Vara?

Q. Police Officer Vara, I'm sorry.

A. I don't recall any specific conversation.

Q. Did he say anything to you, other than what you said?

A. Other than what it was all about, no.

Q. Was anybody else with you when you had this conversation other than yourself and Vara?

A. I can't tell you who was on his side of the phone, but it was a phone conversation. I was by myself.

Q. Did you meet ADA Clark?

A. Yes.

Q. Did you have a conversation with ADA Clark?

A. Yes, I did.

Q. What did you discuss with ADA Clark?

A. They asked me what my involvement

Barnych

was in this case, as the carrying detective.

I detailed to them, probably at the same level of detail that I've provided to you here today, what my involvement was, responded to whatever questions they asked me at that time, and that was pretty much it.

Q. Did you appear at a grand jury after that?

A. Yes, I did. Did I? I don't remember. Honest to God, I don't know. I probably did.

Q. Do you recall giving any testimony with regard to what ADA Clark elicited from you?

A. I don't recall. If you have grand jury minutes with my name on it, I'll acknowledge it. I've been to the grand jury a thousand times, if I've been there once, so it all runs together after a while.

MR. FOGELGAREN: I don't, and I am not trying to fool you.

Q. After speaking to ADA Clark about the matter, did you have any conversations with anybody from the district attorney's

Barnych

office?

A. After meeting with Jim Clark?

MR. FOGELGAREN: Yes.

A. Nobody specifically from the DA's office, no.

Q. Did you have conversations with anybody else about what occurred on October 9, 2004, after you met with ADA Clark?

A. Yes.

Q. Who was that?

A. Detectives Association members, you know, my union reps, Internal Affairs supervisors, an attorney provided to me by the union, Detective Occhino, my wife. Nobody else really.

Q. What conversations did you have with Detective Occhino about the incident?

A. Just the fact that we were being called to Internal Affairs over the incident, and, you know, I was not completely thrilled about it, but it was what it was, and I had to go through that.

Q. Did you speak to Officer Vara about the Internal Affairs investigation?

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A. Not that I recall.

Q. Did you ever speak to Officer Buonora about the Internal Affairs investigation?

A. Not about the Internal Affairs investigation, no.

Q. Did you ever have any conversations with Officer Buonora about the incident that occurred on October 9, 2004?

A. No.

Q. Did you ever have any conversation with Officer Buonora about the investigation that was going on about the incident on October 9, 2004?

A. Not specifically about the incident or the investigation, just -- he routinely would be at the doors of the station house. I would pass him on my way in, you know, and said hello and exchanged pleasantries, if you will, to whatever we could.

Q. Had you ever worked with Officer Buonora prior to October 9, 2004?

A. I can only recall one other

Barnych

instance where I had actually met Officer Buonora prior to that. It was a -- I believe it was a gas station robbery in New Hyde Park, probably about six or seven months before that.

MR. FOGELGAREN: Why don't we mark this as Exhibit 3.

(Barnych Exhibit 3, Document Bates-stamped Nassau County 000302 through 000305 with attached fax cover page, marked for identification.)

Q. I am going to ask you to look at what has been marked as Barnych 3 and ask if you can identify the document, which is a four-page document with the heading Police Department County of Nassau, New York Internal Correspondence dated December 1, 2005.

A. This is a photograph copy of my statement to Internal Affairs of the Nassau County Police Department.

Q. This document, is this all in your handwriting?

A. Other than what has been printed by a machine and items marked "copy," this



Barnych

time stamp on it and there's some cross-outs in here that I did not create, and there's also a fax cover page attached to this. Anything that's written by pen, including my initials encircled, I would say is my handwriting.

Q. The Bates stamp Nassau County 000302, that bears your initials?

A. On the bottom left-hand corner, yes. Well, it's been partially obliterated, but those are mine.

Q. And the handwriting on that page is yours?

A. Correct.

Q. The next page, 000303, is the same, your handwriting and your initials on the bottom of the page?

A. Yes.

Q. The following page, 000304, handwriting is yours and initials are yours?

A. Yes, sir.

Q. 000305, the handwriting is yours?

A. Up to and including where there's a cross-out that says "D sergeant" something,

Barnych

which is obliterated, his shield number and the letters "IAU," but other than that, it's mine.

Q. And your signature appears on this page?

A. Yes, sir.

Q. And your initials appear on the bottom of the page as well; is that correct?

A. Yes, sir.

Q. Do you know where you wrote this statement?

A. At Nassau County police headquarters.

Q. Did you write this statement after being interviewed by a member or members of the Internal Affairs Unit?

A. Yes, sir.

Q. Do you know who interviewed you?

A. I believe it was Lieutenant Fiel and Sergeant Duryea.

Q. Did they ask you anything with regard to your knowledge, if any, if Officer Buonora had been involved in the incident involving Mr. Coggins on October 9, 2004?

Barnych

MR. WEINGARD: Objection as to  
the form of the question.

A. They had asked me a number of  
questions regarding my involvement, what I  
believed Police Officer Vara's involvement  
was, what the involvement was of Detective  
Fannon up to and including other officers and,  
in fact, Officer Buonora.

Q. What did you tell them about  
Officer Buonora?

MR. WEINGARD: Objection.

MS. NAPOLITANO: Objection.

A. There was no volunteered  
information on my part as to what Officer  
Buonora's role was in this initial  
investigation. I also told them that at no  
time did I instruct anybody to say they  
recovered a specific weapon. There was a  
discussion about chain of evidence and  
custody, things along those lines. But with  
specific regards to Buonora, no, there was no  
direct, I guess, involvement on my end.

Q. Were you asked anything by any  
members of the Internal Affairs Unit about

Barnych

what you knew about Detective Buonora's involvement?

MR. WEINGARD: Objection as to the form.

MS. NAPOLITANO: Objection to form.

A. There were a lot of questions asked that day. Specifically about Buonora, I can't remember one from the other. If there's a record of it, it will be in that record.

Q. Did you tell any members of the Internal Affairs Unit about Buonora arriving at that location where Officer Vara was pursuing Mr. Coggins on October 9, 2004?

MR. WEINGARD: Objection as to the form of the question.

MS. NAPOLITANO: Objection to the form.

A. I will object to it too, because it was just too long for me to remember. What is it you are asking?

Q. What I'm asking is did you say anything during your interview with the Internal Affairs Unit about what you learned

Barnych

about Officer Buonora arriving at the location when Officer Vara had started to pursue Mr. Coggins?

MR. WEINGARD: Again, same objection.

MS. NAPOLITANO: Objection.

A. I'm not sure how they may have approached the subject or whether or not it was a specific question directly related to Buonora, and I don't even know if it was part of the Internal Affairs investigation, but it was my understanding that Buonora's involvement was limited to being at the driveway of that house for a period of time and observing that no other persons had entered that driveway. As far as any specifics, I don't remember any more from there.

Q. Is there anything contained in your statement on Barnych 3 regarding Buonora being present at that location on October 9, 2004?

MR. WEINGARD: Do you want to reference page 3?

Barnych

1  
2 A. Okay. On what would be my  
3 written page 3 Bates-stamped number 000304 is  
4 the only reference to Police Officer Buonora  
5 in my letter to Internal Affairs, and it was  
6 specifically addressing whether or not Buonora  
7 was involved in the actual foot pursuit, as  
8 far as that goes, but it didn't address any  
9 other action or lack of action that Buonora  
10 may or may not have taken.

11 Q. You testified earlier that after  
12 you learned about this incident when you were  
13 at the 3rd Precinct, that you obtained a  
14 police radio.

15 A. Yeah.

16 Q. Did you have a police radio prior  
17 to that time?

18 MS. NAPOLITANO: Objection.

19 MR. WEINGARD: Objection as to  
20 form.

21 Q. On that day.

22 A. The squad room has a bank of  
23 radios that are kept in the supervisor's  
24 office, okay. Additionally, there is a police  
25 radio that is out by the blotter where you

Barnych

would sign in and out of. You would normally obtain a set of departmental vehicle keys and a radio from the supervisor's office before leaving the building to go out and cover a scene or go out and interview people.

Q. Did you hear any police radio transmissions regarding the incident on October 9, 2004 at Floral Park prior to you obtaining the police radio at the time you were getting your car?

A. No, sir.

Q. After speaking to Internal Affairs and preparing the statement marked as Barnych 3, did you have any conversations with anybody else at the Nassau County Police Department with regard to the incident of October 9, 2004 at Floral Park?

A. I'm sorry. Give me the time parameters again.

Q. After you prepared the statement, Barnych 3.

A. After I prepared this?

Q. Yes. Did you have any other conversations with anybody at the Nassau

Barnych

County Police Department with regard to the incident on October 9, 2004 in Floral Park involving Mr. Coggins?

MR. WEINGARD: Ira, are we limiting that to Internal Affairs or anybody at all?

MR. FOGELGAREN: Anybody at all in the Nassau County Police Department.

MS. NAPOLITANO: Can I just add? Up from December 1, 2005 to today?

MR. FOGELGAREN: Yes.

MS. NAPOLITANO: You can answer.

MR. WEINGARD: I would object. It's overbroad.

A. Detective Walsh from the Detectives Association.

Q. What conversation did you have with Detective Walsh?

MR. WEINGARD: Objection.

A. I was inquiring if he knew what the status was of the Internal Affairs investigation.

Q. Did you ever learn of any findings of the Internal Affairs



Barnych

investigation?

A. No.

Q. And you retired when?

A. September 14, 2007.

Q. What was your reason for retiring?

A. I got a better job.

MR. FOGELGAREN: I have no further questions.

MR. WEINGARD: I will just be a moment or two.

MS. NAPOLITANO: Are you holding it open?

RQ MR. FOGELGAREN: Yes. I will repeat my request for the complete records of the Internal Affairs Unit. And after reviewing that, if there are other areas which require a further deposition of this witness, I am reserving my rights to that.

MR. WEINGARD: And I would join in that application.

Off the record.

(Discussion off the record.)

Barnych

EXAMINATION BY

MR. WEINGARD:

Q. As a result of what occurred here, did you sustain any disciplinary charges whatsoever?

A. No.

Q. I assume you were not dealt with either administratively or through formal charges when you respond to that?

MS. NAPOLITANO: Objection as to form.

MR. WEINGARD: You can answer it.

A. Up until the time I retired, I was not provided with any list of any departmental complaint or violation of any rules or regulations.

MR. WEINGARD: One moment or two.

Q. I think when you gave your initial testimony, you said that Officer Vara, in essence, was chasing a person he now believes to have been Coggins and that he saw him jump a fence, and did you say he heard a metal sound or did not hear a metal sound when that occurred?

Barnych

MS. NAPOLITANO: Objection to

form.

You can answer.

A. Officer Vara told me that he heard a metal object hit the ground.

Q. Did he tell you that at the scene that morning?

A. Yes.

Q. Because it does appear in his report, but it does not appear in your handwritten report, I don't believe.

Would you take a look at your handwritten report, which I believe to be Barnych 3. You might look at page 2. I'm sorry, I apologize. It does appear.

So he told you that he heard a metal sound hit the ground?

A. Yes.

MS. NAPOLITANO: Objection.

Q. Did he tell you he had seen what it was?

A. At the time that he told me he first heard a metal object hit the ground, he told me that he was not sure what that metal

Barnych

object was. He then learned later that it was the gun.

Q. From whom did he learn that, if you know?

MS. NAPOLITANO: Objection.

A. You'd have to ask him.

Q. Did he mention a name to you?

A. No.

Q. Throughout the entire time that you were at the scene, you said you never saw Officer Buonora?

A. That's correct.

Q. Did his name come up in any context whatsoever while you were there?

MS. NAPOLITANO: Objection to form.

You can answer.

A. Yes.

Q. Can you tell me what it was, please?

A. As I had testified earlier, Officer Vara indicated that while he was actively pursuing this subject, he was aware of the fact that an assisting officer was

Barnych

coming in behind him. It was later determined that that was Officer Buonora.

Q. Do you have any understanding as to why Officer Buonora was no longer at the scene when you arrived?

MS. NAPOLITANO: Objection to form.

MR. WEINGARD: You can answer.

THE WITNESS: It's nice how you say I can answer.

MR. WEINGARD: She'll tell you to.

MS. NAPOLITANO: You can answer.

A. To my understanding, he was released from the scene by the patrol supervisor, Sergeant Gieshen.

Q. Do you know approximately what time, based on your conversations with the sergeant, Buonora was released?

MS. NAPOLITANO: Objection.

If you know.

A. No.

Q. Incidentally, I'm a little confused. Perhaps you can clarify this for

Barnych

me.

I thought you were saying that your crime scene investigator was putting some strings or some materials through the gun at the scene. Did you say that to us before?

A. No. I didn't say strings. What normally would be done is a nylon -- almost -- what is commonly known as, let's say, a flex cuff or a wire tie in the electrical business. That's used to secure through the barrel and the trigger, you know. That's what should have been done to keep the gun from rocking through the transporting box as well.

Q. Do you know whether or not that gun was loaded at the time it was found?

A. It was, in fact, determined to be loaded, but I believe it was made safe for transport.

Q. Do you know where it was transported to?

MS. NAPOLITANO: Objection; asked and answered.

You can answer again.

A. Detective Fannon would be the

Barnych

best source on exactly where it was transported to, but in the normal course of operations, he would have brought it back to the crime scene headquarters, prepared his documentation on it and then forward it to police headquarters to be tested at the ballistics lab.

Q. So if you had two police departments at the scene and your Detective Fannon would have processed this gun at the scene, would he have brought that to the Floral Park Police Department?

MS. NAPOLITANO: Objection.

If you know.

A. No, sir. The 3rd Squad detectives would be the overriding authority at a scene within the Village of Floral Park related to felony investigations. That is the, I guess, what's provided for in the charter. That's why we provide the services that we do.

Q. Do you have any idea as to how the Floral Park Police Department came into possession of the gun and the magazine?

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MS. NAPOLITANO: Objection.

Q. If you're not aware that they had, that's okay. You can tell me that.

A. They were never in the strict legal definition of possession of it. That wouldn't be their purvey. They may have observed it within the territorial confines of their village. But regardless of whether they observed it or not, as long as Nassau County personnel were present, specifically our Crime Scene Unit, it would have been the responsibility of crime scene to take that evidence and bring it back to our -- because ultimately it's going to end up there anyway, whether we were involved or not. If Floral Park recovers a gun in a case unrelated to this, they have to turn it over to the Nassau County Police Department.

Q. All right. I think you were shown Barnych 2.

If you look down at the narrative on this, you will see that the weapon involved, at least purportedly involved, and a magazine were vouchered at the Floral Park



1                                   Barnych  
2       Police Department. Do you have any  
3       explanation for that?

4                   MS. NAPOLITANO: Objection. I  
5       don't know that that's what this  
6       document says.

7                   THE WITNESS: First of all, where  
8       do you see voucher?

9                   MR. WEINGARD: I don't see the  
10      word voucher.

11                  THE WITNESS: Where do you see a  
12      voucher number that would indicate it  
13      was vouchered?

14                  MR. WEINGARD: I was about to ask  
15      you.

16                  Q. I see code numbers or numbers  
17      next to the statement that a Police Officer  
18      Wilson reports finding a 9 millimeter loaded  
19      weapon at 6 Holland Avenue. Weapon is a Hi  
20      point mdl C, serial number is ground off, and  
21      then it says -- bear with me for a moment.

22                  MS. NAPOLITANO: Where are you  
23      reading?

24                  THE WITNESS: It's down here  
25      (indicating).

Barnych

MR. WEINGARD: Believe me, it's there. I'm not making it up.

Q. And I think there is also a reference to a clip, a 25 caliber clip.

A. Um-hum.

Q. Can you explain this document to us, if you know? If you don't know, it's okay.

MS. NAPOLITANO: Objection.

Q. But if you do know, are you suggesting that that doesn't mean that it was vouchered at the Floral Park Police Department?

MS. NAPOLITANO: Objection to the form of the question and to the question.

You can answer.

A. All right. I am going to state for the record that up until today, I have never seen this form, despite working in the 3rd Squad for five years, okay. This appears to be an internal document that's generated solely by the Floral Park Police Department.

MR. WEINGARD: Yes. That's what

Barnych

we say.

A. And at that time, it would not have been part of any investigation that I had done, okay. This was not an event that was initiated by the Floral Park Police Department for me to do follow-up on. It was initiated by Nassau County.

Furthermore, I can deduce from what I see here, and it's fairly obvious, that in the middle of it it itemizes the car numbers that were involved, the ID numbers of the officers from Floral Park, their names, their particular role, the time that they were dispatched and the time they arrived at that particular scene. And in the body of the narrative that you cited just a moment ago, those particular numbers, I would believe with a strong amount of certainty that these are the time entries based on radio or memo book entries that this officer prepared, specifically 0443 would be 4:43 in the morning and sequentially down through and including 9:25, as far as that goes. That's what that is. At least that's my perception of what it

Barnych

is.

MR. WEINGARD: And we will accept that for the moment.

Q. My question to you is this: Does this suggest to you that Floral Park took possession of either the gun or the magazine at the crime scene?

A. No.

MS. NAPOLITANO: Objection.

MR. WEINGARD: That's all I need to know.

Q. The reason I am asking is that is if you look at Barnych Number 1, there is no reference to a gun or a magazine.

A. That's correct.

Q. Can you explain why there would be no reference to that on this particular document?

A. Because the gun and magazine were secured by Detective Fannon. He would have prepared his individual Form 106 relative to what he secured and transported, and that document ultimately would make its way to the 3rd Squad and be incorporated as part of the

Barnych

case.

Q. Is that part of your case file,  
if you remember?

A. I don't have my case file here.  
I have no way of knowing.

MR. WEINGARD: Do we have such a  
document? And this is for the attorney.

MS. NAPOLITANO: I don't know.  
If it was turned over, we have it. If  
it wasn't turned over, we don't have it.  
I have no way of knowing with the amount  
of documents we turned over.

RQ MR. WEINGARD: I understand,  
Donna, and you must understand that I  
was not involved in that aspect of  
discovery.

So what I am calling for is the  
production of any such document which  
relates to the vouchering by the Nassau  
County or Floral Park Police  
Departments, if you can, as it relates  
to Floral Park, but certainly with  
regard to the Nassau County Police  
Department and the vouchering of the gun

Barnych

and the magazine.

MS. NAPOLITANO: Okay. I am going to ask you to reduce it to writing. I will take it under advisement. But I will tell you here and now that I have absolutely no control over Floral Park documents.

MR. WEINGARD: We can subpoena them.

MS. NAPOLITANO: If, in fact, there is a document PDCN 106, which indicates that the gun and the clip were vouchered by the Nassau County Police Department, we will turn over that document, if we have not already turned it over.

MR. WEINGARD: Do you have such a document?

MR. FOGELGAREN: I don't know, and I would join in the request.

Off the record.

(Discussion off the record.)

Q. Incidentally, did you ever see the photograph of the gun? Didn't you say a

Barnych

photograph was taken at the scene of the gun as it lay where it was being secured?

MS. NAPOLITANO: Objection.

Q. By your crime scene people.

MS. NAPOLITANO: I don't think this witness testified to that.

Q. I have "Have you seen a photo of a gun" in my margin, based on the fact that you said there were photographs being taken of the gun; am I correct?

A. Photographs were taken. I haven't seen the original photographs after they were developed and printed.

Q. Would they normally have come to you so that they could be included within your case file?

A. Only if I requested them.

Q. Otherwise, where would they be?

A. Crime Scene Unit would keep -- well, the photo unit would more than likely keep the negatives for those films under whatever crime scene division number was assigned to that case.

Q. Would prints have been made of

Barnych

those negatives?

A. It's very likely. In many cases the district attorney's office requests those photographs, and they bypass the carrying detective.

RQ MR. WEINGARD: I am going to request any photographs of the gun, the car or anything else that was taken at the time of this event.

MS. NAPOLITANO: I am going to ask that you reduce it to writing, and I will take it under advisement.

I will tell you that contained within the IAU report are photocopies of those pictures.

MR. WEINGARD: Works for me. I mean, if you've got them, send them.

MS. NAPOLITANO: I am just saying it's contained in the IAU.

MR. WEINGARD: I've seen my share of 9 millimeters, so it's not that I have to have the clearest definition of the thing, but I do want to see what it is.



Barnych

Q. I'm sorry. I may have gotten myself lost, but did you say you never saw the photograph or photographs of that particular weapon?

A. I never saw the initial printed photographs of that weapon.

Q. Any photocopies of it?

A. I don't recall seeing any photocopies of it.

Q. When you were on the scene, were you able to determine that the serial number had been eradicated from that gun?

A. I don't remember looking at the gun that closely. That's definitely something that Detective Fannon would have been more in a position to answer, because he physically handled the weapon. I did not.

Q. What's the reason for eradicating serial numbers on a weapon?

MS. NAPOLITANO: Objection.

A. We don't have enough time to answer that question.

Q. Why don't you give me your best shot.

Barnych

A. One of the reasons why someone would want to eradicate the serial number is to detect its ability to be traced to its original owner and possibly cover up the fact that the gun may or may not have been stolen on a prior date.

Q. Did you have any occasion whatsoever after the arrest of Mr. Coggins to conduct any further investigation related to the gun or the magazine for that matter in order to determine where it had originated and how it had been defaced?

A. Me personally?

MR. WEINGARD: Yes.

A. No.

Q. Who would have done that at Nassau police?

MS. NAPOLITANO: Objection.

If you know.

A. The gun itself, after Detective Fannon photographs it and sends it over to the crime lab, would have been examined by a firearms expert who would make notations of that, test the gun for operability, okay, and

Barnych

record his data there. So it would be within the purvey of the police department crime lab, if you will, Forensic Evidence Bureau specifically.

Q. Would it be within the purview of the ballistics unit or the general crime lab?

MS. NAPOLITANO: Objection.

You can answer.

A. It's a document that will be provided, but the Forensic Evidence Bureau, which is the official name for the crime lab, is comprised of several compartments. Ballistics or, you know, in that respect would be one of those compartments.

Q. When you went to see Jovan Bates -- I think that's how you said it, Jovan Bates?

A. I said Jovan, tomato tomato.

Q. When you spoke to the tomato --

A. I didn't speak to a tomato.

Q. Or a tomato.

When you spoke to Jovan Bates, did you ask her anything or any questions whatsoever related to the magazine that was

Barnych

found alongside the passenger door to the car?

A. I don't recall specifically having any conversation about that at this time. Is it possible that we did? I don't know.

Q. If you had had such a conversation, would you have taken that down on the notepad you were describing earlier?

A. Maybe, maybe not.

Q. If you did do that, that would end up in your case file?

A. Whatever notes I would have taken would have been in the case file.

Q. And when you left as a detective, what happened to that case file, if you know?

A. I have no knowledge of what happened.

Q. What would normally happen when a detective retires to his case file?

A. Case files in and of themselves are property of the police department, County of Nassau. Whether or not they reduce them to microfilm or store them in a warehouse, I have no clue. I do know that they're kept in the

Barnych

building for a period of time after the case is closed, whether the detective is retired or active, but just because a detective retires doesn't cause any specific action to be done on that case. It's really a matter of where is the space to store the case jacket.

Q. And at some point it's destroyed; is that what I understand you to say?

A. I don't know about destroyed. I would say archived is a better word.

RQ MR. WEINGARD: So again, I call for the production of the case file.

MR. FOGELGAREN: I join.

MS. NAPOLITANO: I ask that it be reduced to writing, and I will take it under advisement.

MR. WEINGARD: Thank you, Detective Barnych. I appreciate your time.

MR. FOGELGAREN: I have a couple of follow-ups.

FURTHER EXAMINATION

BY MR. FOGELGAREN:

Q. You said Sergeant Gieshen is it?

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Barnych

A. Gieshen.

Q. That he released Officer Buonora from the scene?

A. I said I believe he may have been responsible for Officer Buonora being relieved at the scene, okay.

Q. You said you later determined that it was Officer Buonora who came after Officer Vara started to follow the suspect.

A. Um-hum.

Q. When did you determine that it was Officer Buonora?

A. While I was present at that scene, somewhere within that two-hour time frame.

MR. FOGELGAREN: Thank you. I have no further questions.

MR. WEINGARD: We're done, subject only to the fact that if there are additional materials, we will be back to you.

(Time noted: 4:00 p.m.)

Barnych

A C K N O W L E D G M E N T

STATE OF NEW YORK     )  
                                      :ss  
COUNTY OF                     )

I, ALEXANDER J. BARNYCH, hereby  
certify that I have read the transcript of my  
testimony taken under oath in my deposition of  
February 25, 2010; that the transcript is a  
true, complete and correct record of my  
testimony, and that the answers on the record  
as given by me are true and correct.

-----  
ALEXANDER J. BARNYCH

Signed and subscribed to before  
me, this                     day  
of                                 , 2010.

-----  
Notary Public, State of New York

-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
ALEXANDER J. BARNYCH	MR. FOGELGAREN	4, 99
	MR. WEINGARD	80

-----DOCUMENT REQUEST-----

PAGE	79	Complete records of Internal Affairs Unit
	91	Document relating to vouchering of gun and magazine by Nassau County or Floral Park Police Departments
	94	Any photographs of gun, car or anything else taken at time of event
	99	Case file

-----EXHIBITS-----

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C E R T I F I C A T E

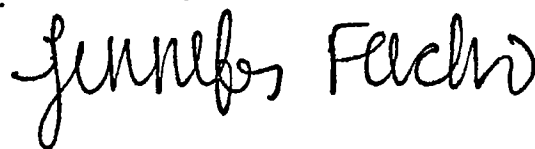
STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF NASSAU            )

I, JENNIFER FUCHS, a Notary  
Public within and for the State of New  
York, do hereby certify:

That ALEXANDER J. BARNYCH, the  
witness whose deposition is hereinbefore  
set forth, was duly sworn by me and that  
such deposition is a true record of the  
testimony given by such witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I  
am in no way interested in the outcome  
of this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 7th day of  
March, 2010.



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JENNIFER FUCHS